

Message Text

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PAGE 01 STATE 286278
ORIGIN ARA-14

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AMEMBASSY NASSAU IMMEDIATE
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CNO WASHDC

C O N F I D E N T I A L STATE 286278

PARAMARIBO PASS TO ASSISTANT SECRETARY TODMAN

E.O. 11652:GDS

TAGS:PGOV, ECON, EFIN, EAID, EFIS, EGEN, MARR, BF

SUBJECT: MILITARY FACILITIES AGREEMENT

REF: (A) NASSAU 1736, (B) STATE 308145 DEC. 76

1. WE HAVE CONSIDERED GCOB NOTE AND YOUR ANALYSIS THEREOF
IN REFTELS AND ARE RELUCTANT TO ACCEPT ANY INTERPRETATION OF
THE AUTECH AGREEMENT WHICH WOULD BAR THE USE OF THIRD
COUNTRY NATIONAL (TCN) EMPLOYEES. IT IS OUR VIEW THAT
ARTICLES I AND IV OF THE AGREEMENT, IN PERTINENT PART,
EXEMPT FROM PASSPORT, VISA, IMMIGRATION AND ALIEN
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 286278

REGISTRATION REQUIREMENTS NOT ONLY THOSE CIVILIANS
EMPLOYED DIRECTLY BY THE U.S. FORCES, BUT ALSO THOSE
EMPLOYED BY A U.S. CONTRACTOR, SO LONG AS THESE PERSONS
ARE NOT ORDINARILY RESIDENT IN THE BAHAMAS AND ARE THERE
SOLELY FOR THE PURPOSES OF THE AGREEMENT. THUS, IF THE
"NOT ORDINARILY RESIDENT" AND THE "SOLELY FOR THE
PURPOSES" TESTS ARE MET, THESE ARTICLES DO NOT ABSOLUTELY

PRECLUDE THE HIRING OF TCN EMPLOYEES. THIS INTERPRETATION SEEMS IMPLICITLY RECOGNIZED IN THE REFERENCE IN THE GCOB NOTE TO "OTHER NON-BAHAMIANS NOT SO DESCRIBED" IN ARTICLE I. WE CANNOT AGREE WITH EMBASSY VIEW, HOWEVER, THAT ARTICLE IX, SINGLY OR IN CONJUNCTION WITH ARTICLE I,

PRECLUDES HIRING PERSONS NOT ORDINARILY RESIDENT IN THE U.S. OR THE BAHAMAS. OUR INTERPRETATION OF ARTICLE IX WOULD PERMIT HIRING TCNS IN CONNECTION WITH CONSTRUCTION, MAINTENANCE AND REPAIR WORK WHEN IT IS NOT FEASIBLE TO HIRE PERSONS ORDINARILY RESIDENT IN THE BAHAMAS, AND WOULD PERMIT HIRING TCNS IN ALL OTHER WORK WHENEVER THERE ARE NO AVAILABLE QUALIFIED PERSONS ORDINARILY RESIDENT IN THE BAHAMAS.

2. IN VIEW OF THE FOREGOING, AND CONSISTENT WITH THE APPROACH OUTLINED PARA. 5 AND 6 REFTEL A, WE SUGGEST THE FOLLOWING RESPONSE TO THE GCOB NOTE. BEGIN TEXT QUOTE. COMPLIMENTARY OPENING . . . AND HAS THE HONOR TO REFER TO MINISTRY NOTE (NUMBER) OF (DATE) CONCERNING THE EMPLOYMENT AT THE AUTC FACILITY, OF CERTAIN NON-BAHAMIANS. PARAGRAPH. THE EMBASSY WISHES TO INFORM THE MINISTRY THAT U.S. NAVY AND CONTRACTOR OFFICIALS AT AUTC HAVE BEEN INSTRUCTED TO ADHERE TO THE AUTC AGREEMENT WITH REGARD TO ALL NEW HIRES. HOWEVER, THE U.S. GOVERNMENT AND ITS CONTRACTORS MUST RELY ON THE DETERMINATION BY BAHAMIAN AUTHORITIES

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 286278

OF THE IMMIGRATION STATUS OF PROSPECTIVE EMPLOYEES. ACCORDINGLY, NAVY AND CONTRACTOR OFFICIALS HAVE BEEN INSTRUCTED TO OBTAIN FROM LOCAL BAHAMIAN IMMIGRATION AUTHORITIES A WRITTEN CERTIFICATION THAT THE PRESENCE IN THE BAHAMAS OF THE PROSPECTIVE EMPLOYEE IS NOT UNLAWFUL. PARAGRAPH. WITH RESPECT TO EMPLOYMENT PRACTICES AT THE AUTC FACILITY, IT IS THE VIEW OF THE U.S. GOVERNMENT THAT ARTICLE IV OF THE AGREEMENT EXEMPTS FROM THE IMMIGRATION LAWS OF THE COMMONWEALTH OF THE BAHAMAS ONLY THOSE PERSONS DESCRIBED IN ARTICLE I AND THAT THE EMPLOYEES OF THE U.S. NAVY OR ITS CONTRACTORS, SUBJECT TO THE CONDITIONS OF ARTICLE IX, MAY INCLUDE PERSONS WHO ARE NOT ORDINARILY RESIDENT IN THE BAHAMAS. PARAGRAPH. THE U.S. GOVERNMENT'S CURRENT EMPLOYMENT PRACTICES AT AUTC REFLECT A CONSISTENT EFFORT TO HIRE BAHAMIAN LABOR. HOWEVER, THE UNITED STATES GOVERNMENT WISHES TO EMPHASIZE THAT IF A JOB CANNOT BE FILLED FROM THE BAHAMIAN LABOR FORCE, IT MUST BE FILLED BY A PRESIDENT OF THE UNITED STATES OR, ON A CASE BY CASE BASIS, BY A NATIONAL OF A THIRD COUNTRY. PARAGRAPH. COMPLIMENTARY CLOSE. UNQUOTE.

3. SUBJECT TO EMBASSY COMMENTS YOU ARE AUTHORIZED TO

DELIVER THIS NOTE TO THE GCOB.

4. WITH REFERENCE TO THE SPECIFIC CASES OF NON-U.S. NON-BAHAMIAN EMPLOYEES AT U.S. NAVY FACILITIES MENTIONED IN THE GCOB AIDE MEMOIRE, THE NAVY IS CURRENTLY CONDUCTING A REVIEW OF ALL TCNS EMPLOYED AT AUTEC AND NAVFAC. AS

REF B ADVISED LAST DECEMBER, NAVY HAS TAKEN POSITIVE STEPS TO ENSURE THAT USG OBLIGATIONS UNDER THE CURRENT AGREEMENT ARE FULFILLED. PRECISELY TO PRECLUDE SUCH HIRING PROBLEMS, THE HIRING REPRESENTATIVE OF THE AUTEC CONTRACTOR (RCA) ESTABLISHED THE PRACTISE OF MEETING MONTHLY WITH THE BAHAMIAN MINISTER OF LABOR.

CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 286278

5. TALKING POINTS: (A) AS YOU RECALL, IN THE COURSE OF HIS BILATERAL CONVERSATION WITH PINDLING IN SEPTEMBER, PRESIDENT CARTER INSTRUCTED SECRETARY VANCE TO LOOK INTO THE MATTER OF HIRING PRACTISES AT OUR FACILITIES. (B) NAVY AND CONTRACTOR OFFICIALS AT AUTEC HAVE BEEN INSTRUCTED TO ADHERE TO THE AUTEC AGREEMENT WITH REGARD TO HIRING POLICY. (C) WHEN A POSITION IS OPEN AT A U.S. FACILITY WHICH CANNOT BE FILLED FROM THE BAHAMIAN LABOR FORCE, IT MUST BE FILLED BY A RESIDENT OF THE U.S. OR BY A NATIONAL OF A THIRD COUNTRY. VANCE

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